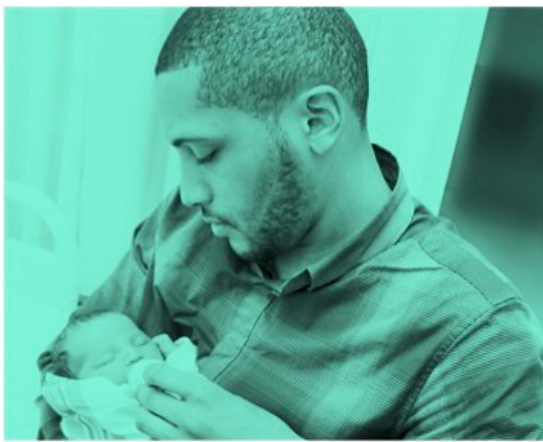


New York Paid Family Leave: What Health Care Providers Need to Know A Guide from A Better Balance



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Goals of This Guide

This guide was created by A Better Balance for health care providers and their practices. The purpose of this guide is to provide comprehensive information about New York State's paid family leave law.

About A Better Balance: The Work & Family Legal Center

A Better Balance is a national legal advocacy organization dedicated to promoting fairness in the workplace and helping workers meet the conflicting demands of work and family. Through legislative advocacy, litigation, research, public education, and technical assistance to state and local campaigns, A Better Balance is committed to helping workers care for their families without risking their economic security. You can find out more information at abetterbalance.org.

I. Overview

1. What does the paid family leave law do?

The law guarantees workers paid time off to:

- bond with a new child (including adopted and foster children);
- care for a seriously ill family member (child, parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent);
- or address certain military family needs.

2. When do benefits start?

Benefits began on January 1, 2018. Workers can start receiving benefits 6 months after their start date. If workers work less than 20 hours per week, they may need to work for slightly longer (175 days) to qualify.

3. How much paid family leave can my patients take?

Workers can take up to 12 weeks of paid family leave.

4. Who is covered by the paid family leave law?

Most people who work in New York State outside the government, either full-time or part-time, are covered under the law. It doesn't matter how many people work for their employer. The law applies regardless of immigration or citizenship status.

5. How much money will patients get while taking paid family leave?

Workers receive 67% of their average weekly pay, up to a cap. In 2021, the cap is \$971.61 per week. In 2022, the cap will be \$1,068.36 per week.

6. Who pays for paid family leave?

Workers pay for paid family leave through small payroll deductions. For 2021, these deductions will be no more than an average of \$7.41 per week, and many workers will pay less than that. For 2022, these deductions will be no more than an average of \$8.15 per week, and many workers will pay less than that.

7. Will my patients be able to return to their job after taking paid family leave?

Yes. Workers have the right to return to work after taking paid family leave, either to the job they held before taking leave or to a comparable job.

8. Will my patients be able to keep their health insurance while taking paid family leave?

Yes. Workers who receive health insurance through their employer have the right to keep their healthcare coverage under its current conditions while on paid family leave. Workers must continue to make any normal contributions to the cost of their health insurance premiums.

9. I have patients who live in New York but work in another state. Are they covered by New York's paid family leave law?

No. New York's paid family leave law covers only workers who work in New York State. However, if your patients work in New Jersey, they might be covered under New Jersey's paid family leave law.

10. How is the paid family leave law different from the Family and Medical Leave Act (FMLA)?

Although the two laws are similar in many ways, they have some key differences. Most importantly, New York's paid family leave law gives covered workers the right to be *paid* while they are on leave, while the FMLA only gives the right to *unpaid* time. Both laws give workers the right to return to work after taking leave and to continuation of their health insurance while on leave.

Though many workers are covered by both laws, some workers covered by New York's paid family leave law are not covered by the FMLA and vice versa. For more information on the FMLA, see Question 34(c).

II. Family Care

11. What does the paid family leave law do for caregivers?

The law guarantees workers time off to care for a seriously ill or injured family member (in addition to guaranteeing time off to bond with a new child or address certain military family needs).

12. Who can my patients take leave to care for (or who can take leave to care for my patients)?

If covered by the law, workers can take paid family leave to care for their child, parent, parent-in-law, spouse, domestic partner, grandchild, or grandparent when that person has a serious health need.

13. Who is considered a “child” under this law?

Under the law, someone’s child includes their biological, adoptive, or foster child, as well as their legal ward, stepchild, the child of their domestic partner, or a child to whom they stand *in loco parentis* (when they have taken on the role and responsibilities of a parent, even if they do not have a biological or legal relationship with the child).

14. Who qualifies as a domestic partner under this law?

Under the law, many types of couples, regardless of gender, can qualify as domestic partners. Couples do not have to be married or registered under a domestic partnership law or registry. Instead, they can qualify by showing that they depend upon each other—based on factors such as living together, sharing finances, owning property together, having a child in common, or other factors showing the close, personal nature of their relationship. In addition, if they are registered as domestic partners in *any* jurisdiction (including outside the state of New York), they would qualify as domestic partners under the paid family leave law.

15. What kinds of health needs are covered?

The law covers leave to care for a family member with a mental or physical illness, injury, condition, or disability that requires either in-patient treatment or ongoing supervision or treatment by a health care provider. An ordinary illness like the flu or a cold would not be covered.

For example, if your patient is a child with a chronic condition like asthma or epilepsy, the child’s parent or other covered family member may be able to take paid family leave to care for them. This leave could also be used to care for a spouse or domestic partner receiving chemotherapy or recovering from surgery, or to care for an aging parent or grandparent who has been injured in a fall or who is battling Alzheimer’s.

16. What options are there for a patient who needs to take time off because of the patient’s own serious health condition?

Temporary disability insurance (TDI), sometimes called disability benefits (DB), gives workers the right to partial wage replacement while they are unable to work due to an off-the-job illness or injury (including pregnancy-related disabilities and recovery from childbirth). Most New York employers, including all employers who are required to provide paid family leave, are required to provide TDI coverage. Covered workers can receive TDI while they are away from work due to their *own* serious health needs.

Unlike paid family leave, TDI benefits are capped at a maximum of \$170 per week and TDI does not provide job protection or guarantee continuation of health insurance (though workers may be protected by other laws like the FMLA). Covered workers can receive TDI for up to 26 weeks in a year for any particular period of disability. For more information on how TDI impacts parents who give birth, see Question 30.

17. Do caregivers have to take paid family leave in one chunk or can they take leave in smaller time units?

If they need to, caregivers can take leave intermittently in units as small as one day. For example, if a covered worker needs time off to bring a parent to chemotherapy treatments once a week, the worker can take one day of paid family leave for several weeks or months and work the remaining four days of the week. Workers planning to take intermittent family leave should tell their employer and paid family leave insurance carrier of their intended schedule for intermittent leave.

18. When do caregivers need to let their employer know they are taking paid family leave?

Workers must provide their employer with at least 30 days advance notice before taking leave if the reason for leave is foreseeable, such as for a family member's planned medical treatment. If 30 days advance notice is not possible, for example in the case of a medical emergency, employees must give notice to their employer as soon as is practical.

Workers should let their employer know the anticipated timing and duration of the leave and should tell their employer as soon as possible if dates of scheduled leave change.

19. How do caregivers apply for paid family leave benefits?

In order to take paid family leave to provide care for a family member, workers will need to submit an application to their employer's paid family leave insurance carrier. Workers should be able to get this form from their employer or their employer's paid family leave insurance carrier. This application will include information from the worker, information from the employer, and medical certification from a health care provider with information about the family member's serious health condition, as well as an appropriate release from the patient.

20. What role do health care providers play in the application process for family care leave?

The special role of health care providers in the application process is to provide documentation of their patient's serious health condition by filling out an insurance form. This form will include information such as the patient's diagnosis, the date on which the condition started, and an estimate of the time the caregiver will need to care for the patient. Health care providers are also encouraged to provide patients with information about their rights and to refer them to our resources for additional information.

21. What types of health care providers can certify patients for paid family leave?

Health care providers who can certify patients for paid family leave include physicians, physician assistants, chiropractors, dentists, physical therapists, nurse practitioners,

registered professional nurses, podiatrists, optometrists, opticians, psychologists, clinical social workers, occupational therapists, speech therapists, midwives, mental health practitioners, and public health professionals.

III. New & Expecting Parents

22. What does the paid family leave law do for new parents?

The law guarantees parents of any gender time off to bond with a new child, including adopted and foster children (in addition to guaranteeing time off to care for a seriously ill or injured family member or address certain military family needs).

23. When can my patient take paid family leave to bond with a new child?

Parents can take bonding leave at any point within the first 12 months following a child's birth or placement for adoption or foster care. If a child has two parents, *each* parent (of any gender) has the right to take up to 12 weeks of paid family leave.

24. Do parents have to take bonding leave in one chunk or can they take leave in smaller time units?

If they need to, workers can take leave intermittently in units as small as one day. Workers planning to take intermittent family leave should tell their employer and paid family leave insurance carrier of their intended schedule for intermittent leave.

25. When do workers need to let their employer know they are taking paid family leave for bonding?

Workers must provide their employer with at least 30 days advance notice before taking leave if the reason for leave is foreseeable, such as for an expected birth. If 30 days advance notice is not possible, for example in the case of a medical emergency, employees must give notice to their employer as soon as is practical.

Workers should let their employer know the anticipated timing and duration of the leave and should tell their employer as soon as possible if dates of scheduled leave change.

26. If my patient takes paid family leave to bond with a new child, can my patient's spouse or domestic partner (or other co-parent) also take paid family leave?

Yes, paid family leave is available to both parents. Leave may be used simultaneously by both parents or at separate times within the first 12 months after birth or placement. It does not matter whether the parents are married, living together, or otherwise in a relationship. However, if both parents work for the same employer, that employer may prohibit those parents from taking paid family leave at the same time.

27. How do my patients apply for paid family leave benefits for bonding?

In order to take paid family leave to bond with a new child, workers will need to submit an application to their employer's paid family leave insurance carrier. Workers should be able to get this form from their employer or their employer's paid family leave insurance carrier. This application will include information from the worker, information from the employer, and documentation of the birth, adoption, or foster placement of the child. Health care providers may be asked for assistance in providing this documentation.

28. What role do health care providers play in the paid family leave application process for bonding leave?

The special role of health care providers in the application process is to provide birth parents with a birth certificate or other documentation of the birth or pregnancy. Adoptive and foster parents will need to provide appropriate documentation of the adoption or placement. Health care providers are also encouraged to provide patients with information about their rights and to refer them to our resources for additional information.

29. How does paid family leave relate to disability benefits?

Temporary disability insurance (TDI), sometimes called disability benefits (DB), gives workers the right to partial wage replacement while they are unable to work due to an off-the-job illness or injury, including pregnancy-related disabilities and recovery from childbirth. Most New York employers, including all employers who are required to provide paid family leave, are required to provide TDI coverage.

Unlike paid family leave, TDI benefits are capped at a maximum of \$170 per week and TDI does not provide job protection or guarantee continuation of health insurance (though workers may be protected by other laws like the FMLA). Covered workers can receive TDI while they are away from work due to their *own* serious health needs, while they can take paid family leave to bond with a new child, care for a seriously ill or injured family member, or address certain military family needs.

30. How do disability and paid family leave work for parents who give birth?

Eligible workers can receive TDI benefits for any particular period of disability for up to 26 weeks in a year. A worker who has given birth is generally considered disabled for 6 weeks after a vaginal delivery and 8 weeks after a Caesarian section, though may be considered disabled for longer if certified by a health care provider (for example, if there are complications). Workers can also receive TDI benefits prior to delivery if their health care provider certifies that they are unable to work.

Workers eligible for both TDI and paid family leave cannot receive TDI benefits and paid family leave benefits at the same time. However, they can take these benefits sequentially and can choose how to combine these benefits. For example, a worker who has just given

birth can receive TDI benefits during her recovery from childbirth (usually 6-8 weeks) and then take paid family leave to bond with her new child. Alternatively, that worker could choose to take paid family leave immediately following the child's birth. Different choices may make sense for different families.

IV. Military Families

31. What does the paid family leave law do for military families?

The law guarantees workers time off before, during, or after a close family member's deployment abroad to address certain needs arising out of their loved one's military service (in addition to guaranteeing time off to bond with a new child or to care for a seriously ill or injured family member).

32. When can someone take leave in connection with a deployment?

This leave can be taken to make financial or legal arrangements for the servicemember, to make arrangements for the care or education of the servicemember's child or the care of the servicemember's parent, or to attend official military events or support programs. It can also be used to spend time with a servicemember for up to 15 days during a short-term, temporary rest and recuperation leave during deployment.

33. Can a worker use paid family leave in connection with the military service or deployment of a family member other than a spouse?

Yes. Workers can take paid family leave in connection with their child, parent, parent-in-law, spouse, or domestic partner's deployment.

V. Other Relevant Laws

34. What other laws protect patients in connection with pregnancy and parenting in the workplace?

Many workers may have additional rights in the workplace under a number of other city, state, and federal laws.

a) Pregnant Workers Fairness Act (PWFA)

If your patient is pregnant, recovering from childbirth, or has a related medical condition, she may have important legal rights in the workplace. In general, employers must provide "reasonable accommodations" for these workers—changes to their work duties or schedule in order to stay healthy. Some examples of reasonable accommodations are: light duty, help with lifting, temporary transfers, breaks to rest or drink water, a modified work schedule, or time off for recovery from childbirth.

Both New York City and New York State have specific laws related to pregnancy accommodation; these laws are similar to one another, but not identical. For more information on these laws, visit abetterbalance.org.

b) Temporary Disability Insurance (TDI)

If your patient is temporarily unable to work due to an off-the-job illness or injury (including pregnancy-related disabilities and recovery from childbirth), your patient may be entitled to partial wage replacement while on leave under New York's temporary disability insurance law (TDI). For more information on TDI, see Questions 16, 29, & 30 or visit abetterbalance.org.

c) Family and Medical Leave Act (FMLA)

Your patient may be covered by the Family and Medical Leave Act (FMLA), a federal law that gives covered workers up to 12 weeks of *unpaid* time off to address their own serious health needs, bond with a new child (including an adopted or foster child), care for a seriously ill or injured family member, or address certain military family needs. Workers covered by the FMLA have the right to return to work after taking leave and to continuation of their health insurance while on leave. The FMLA covers government employees and workers whose employer has 50 or more employees. Workers must have worked for their employer for at least one year and have worked at least 1,250 hours in the past 12 months to be eligible.

Generally, workers who are covered by both the FMLA and New York's paid family leave law who are taking time off for a purpose covered by both laws, for example to bond with a new child, can be required to take time under both laws at the same time. For more information on the FMLA, visit abetterbalance.org.

d) New York State Paid Sick Leave and New York City Earned Safe and Sick Time Act (ESSTA)

Patients may be covered by the New York State paid sick leave law or, if they work in New York City, the New York City Earned Safe and Sick Time Act. These laws give covered workers the right to take time off, usually paid, when they or a family member are sick, injured, receiving medical treatment (including mental health and preventive care), or addressing the impacts of domestic and sexual violence. Under either law, covered workers can earn and use up to 1 hour of sick time for every 30 hours worked. For example, workers could use this time to recover from the flu or take their child to a doctor's appointment.

For more information on these laws, visit abetterbalance.org.

e) Americans with Disabilities Act (ADA)

The Americans with Disabilities Act (ADA) is a federal law that gives workers with disabilities the right to reasonable accommodations in the workplace and prohibits covered employers from discriminating against disabled workers. Some pregnancy-related conditions, such as preeclampsia or gestational diabetes, are considered disabilities under the law. For more information on the ADA, visit abetterbalance.org.

f) Anti-Discrimination Laws

Other anti-discrimination laws at the city and state level provide additional safeguards against workplace discrimination based on sex, pregnancy and breastfeeding, sexual orientation, gender identity, caregiver status, disability, marital and partnership status, and other factors. For more information on anti-discrimination protections, visit abetterbalance.org.

How to Get Additional Help

For more information on New York's paid family leave law or the other laws covered in this guide, visit us online at FamilyLeaveWorks.org or call our free and confidential helpline at 1-833-NEED-ABB.